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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,574	07/22/2003	Mateo Jozef Jacques Mayer	116632	6548

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EXAMINER

JOHNSON, EDWARD M

ART UNIT	PAPER NUMBER
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1754

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/623,574	Applicant(s) MAYER ET AL.	
	Examiner Edward M. Johnson	Art Unit 1754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1 and 4-12 rejected under 35 U.S.C. 103(a) as being unpatentable over Popp US 5,433,950 in view of Ninane et al. US 5,154,909 and Bieler US 4,094,956.

Regarding claim 1, Popp '950 discloses a method of forming a colloidion comprising forming a salt (see column 4, lines 24-34) and a crystal growth inhibitor comprising sucrose acetate isobutyrate (see column 5, lines 15-32). Popp further discloses 1-60% crystal growth inhibitor (see column 5, lines 62-66); calcium pantothenate (see column 3, lines 37-40), which would at least motivate washing to purify the disclosed salt; and specific anions and cations (see column 4, lines 24-29), which would at least motivate a bulk density of 0.7 g/cc or higher and electrolysis.

Popp '950 fails to disclose forming an octahedral or spherical, high purity salt.

Ninane '909 discloses spherical salt.

It would have been obvious to one of ordinary skill in the art at the time the invention was made make the salt of Popp in a spherical form, as in Ninane, because Ninane discloses the spherical salt has properties of pan-salt, which value for salt-preserving methods (see column 1, lines 19-30 and 52-54), which would motivate one of ordinary skill to use the spherical form in order to preserve the crystallized salt.

Popp fails to disclose wherein the K and/or Br and/or SO_4 and/or Ca content is at least 5% lower.

Bieler '956 discloses removal of sulfate content from a salt (see abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to remove sulfates from the salt in Popp by using the washing in Bieler because Bieler discloses the washing to remove sulfates to provide a minimally expensive method of upgrading the salt (see column 1, lines 26-29) and Popp discloses a salt can be formed in situ (see column 4, lines 30-31), which would obviously, to one of ordinary skill, suggest the desirability of a high purity of the disclosed in situ salt.

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Regarding claims 10-12, Popp '950 discloses specific anions and cations (see column 4, lines 24-29), which would at least motivate a bulk density of 0.7 g/cc or higher and electrolysis.

Regarding claim 5, Popp '950 discloses rapidly drying (see column 3, lines 54-57).

Regarding claims 6-7 and 9, Popp '950 discloses sucrose acetate isobutyrate (see column 5, lines 15-32).

Regarding claims 4 and 8, Popp '950 discloses calcium pantothenate (see column 3, lines 37-40), which would at least motivate washing to purify the disclosed salt.

3. Claims 1 and 4-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fox et al. US 5,215,769 in view of Ninane '909 and Bieler US 4,094,956.

Regarding claim 1, Fox '769 discloses a method of crystallizing a metastable complex salt (abstract) comprising forming emulsified product containing a crystallization inhibitor such as sucrose ester (see column 13, lines 33-38). Fox further '769 discloses salad dressing, which would suggest washing to allow for safe consumption; calcium citrate and malate, and forming insoluble salts or soaps with long chain fatty acids (see abstract), which would at least suggest a bulk density of 0.7 g/cc or higher and electrolysis.

Fox '769 fails to disclose forming a high purity salt.

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Ninane '909 discloses spherical salt.

It would have been obvious to one of ordinary skill in the art at the time the invention was made make the edible dressing salt of Fox in a spherical form, as in the Ninane food industry salt, because Ninane discloses the spherical salt has properties of pan-salt, which value for salt-preserving methods (see column 1, lines 19-30 and 52-54), which would motivate one of ordinary skill to use the spherical form in order to preserve the crystallized salt.

Fox '769 fails to disclose wherein the K and/or Br and/or SO_4 and/or Ca content is at least 5% lower.

Bieler '956 discloses removal of sulfate content from a salt (see abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to remove sulfates from the salt in Popp by using the washing in Bieler because Bieler discloses the washing to remove sulfates to provide a minimally expensive method of upgrading the salt (see column 1, lines 26-29) and Fox discloses crystallizing a metastable complex salt (abstract), which would obviously, to one of ordinary skill, suggest the desirability of a high purity of the disclosed metastable salt.

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Regarding claims 4 and 10-12, Fox '769 discloses salad dressing, which would suggest washing to allow for safe consumption; calcium citrate and malate, and forming insoluble salts or soaps with long chain fatty acids (see abstract), which would at least suggest a bulk density of 0.7 g/cc or higher and electrolysis.

Regarding claim 5, Fox '769 discloses drying (see column 5, lines 42-65).

Regarding claims 6-9, Fox '769 discloses sucrose ester (see column 13, lines 33-38) calcium citrate and malate (see abstract).

Response to Arguments

4. Applicant's arguments filed 3/31/06 have been fully considered but they are not persuasive.

It is argued that the Office Action cites Bieler... the claimed invention. This is not persuasive because the instant process is claimed using open language "includes" and "wherein", which does not exclude an additional "washing" step to remove the sulfates as claimed. It is noted that the features upon which applicant relies (i.e., a process without a "washing" step to remove the sulfates as disclosed) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not

read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

It is argued that moreover Popp teaches that the amount... (col. 5, lines 65-66). This is not persuasive because Applicant's claimed range appears equivalent to less than 5%, not less than 0.5%, as Applicant appears to suggest.

It is argued that furthermore, none of the applied references disclose... but without using a crystal growth inhibitor. This is not persuasive because Popp discloses sucrose, which is the same crystal growth inhibitor as claimed. Thus, the effect of the disclosed sucrose, or absence thereof, would be the same as the claimed sucrose.

It is argued that using the process taught in Bieler on a salt produced... would destroy the spherical shape of the crystals formed in Ninane. This is not persuasive because even if the salt were crushed beforehand, as Applicant asserts, the crushed salt could then subsequently be given a spherical shape as disclosed in Ninane.

It is argued that finally, all three references... as indicated in MPEP §2143.01. This is not persuasive because it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was

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concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Applicant broadly claims a process "to make salt compositions", which to one skilled in the art, would include any field so long as a salt is made.

Further, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it would have been obvious to one of ordinary skill in the art at the time the invention was made make the salt of Popp in a spherical form, as in Ninane, because Ninane discloses the spherical salt has properties of pan-salt, which value for salt-preserving methods (see column 1, lines 19-30 and 52-54), which would motivate one of ordinary skill to use the spherical form in order to preserve the crystallized salt. It also would have been obvious to one of ordinary skill in the art at the time the invention was made to remove sulfates from the salt in Popp by using the washing in

Bieler because Bieler discloses the washing to remove sulfates to provide a minimally expensive method of upgrading the salt (see column 1, lines 26-29) and Popp discloses a salt can be formed in situ (see column 4, lines 30-31), which would obviously, to one of ordinary skill, suggest the desirability of a high purity of the disclosed in situ salt.

It is argued that Fox teaches sauces and salad dressings (Abstract). This is not persuasive because it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Applicant broadly claims a process "to make salt compositions", which to one skilled in the art, would include any field so long as a salt is made, including such fields as salad dressings or those of Ninane and Bieler. Since the claimed field of invention broadly includes any salt, it would have been within the purview of an ordinary artisan to incorporate teachings from a similarly broad field. Fox discloses sucrose, which is the same crystal growth inhibitor as claimed. Thus, the effect of the disclosed sucrose, or absence thereof, would be the same as the claimed sucrose.

Conclusion

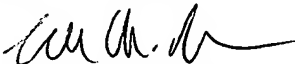
5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward M. Johnson whose telephone number is 571-272-1352. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley S. Silverman can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Edward M. Johnson
Primary Examiner
Art Unit 1754

EMJ